

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Joseph Shaw, 18 Wildflower Drive, Amherst Ma, 01002

Date application filed with the Town Clerk: August 1, 2008

Nature of request: Special Permit for the creation of two flag lots (Map 21D, Parcels 7 & 2) under Section 6.3 of the Zoning Bylaw.

Address: 18 Wildflower Drive (Map 21D, Parcel 8)

Legal notice: Published on September 10 and September 17, 2008 in the Daily Hampshire Gazette and sent to abutters on September 10, 2008.

Board members: Jane Ashby, Hilda Greenbaum, Eric Beal

Submissions: The petitioner submitted a packet of information with the application including: an ANR Plan endorsed by the Planning Board on August 6, 2008, and a draft Driveway Maintenance Agreement.

Town staff submitted the following information:

- A memorandum dated September 18, 2008 regarding the application, zoning and dimensional requirements for the subject property;
- A copy of the previous Special Permit ZBA FY95-19 containing approved plans;
- A GIS map showing the proposed flag lots;
- A reduced size copy of the ANR plan endorsed by the Planning Board on August 6, 2008.

Site Visit: September 23, 2008

The Board met with the applicant at the property and observed the following:

- A large wooded area, separated by an existing dwelling, proposed to be divided and located within a neighborhood of mostly wooded and relatively large single family lots;
- An existing single family dwelling accessed by a long driveway and separate parking area;
- The location of the proposed shared driveway, currently part of the single family driveway;
- The area of the proposed access to the south flag lot;
- The area where a driveway would be located for the north flag lot;
- Review of approximate property boundaries in the vicinity of the existing driveway;
- Review of the topography of the north flag lot;
- The location of neighboring dwellings in close proximity to each flag lot.

Public Hearing: September 25, 2008

The applicant's attorney, Peter MacConnell, presented the application to the Board. He stated the following:

- The proposal is for the creation of two flag lots as per the survey prepared by Heritage Surveys dated April 29, 2008 and last revised on July 14, 2008;
- Each flag lot meets the minimum requirements of Section 6.3 of the Zoning Bylaw, including twice the required lot area exclusive of the flag pole (6.32), 40 feet of road frontage (6.33), building area width (6.34) and building circle (6.35);
- All three flag lots were originally approved in ZBA FY1981-35;
- The middle flag lot had been built on after the FY1981 Special Permit;
- The southerly flag lot was approved again via ZBA FY1995-19;
- The proposal meets the criteria of Section 10.38 of the Zoning Bylaw including being suitable located in a neighborhood containing approximately 20 other flag lots and compatible with the single family residences in the area and is in harmony with the intent of the Zoning Bylaw;
- The flag lots will be accessed by the existing driveway;
- A draft common driveway agreement has been prepared and submitted;
- There are prospective buyers for the two vacant flag lots. There are no current plans to develop the northerly flag lot, and, the southerly flag lot is intended to be developed with a single family home.

Ms. Ashby asked whether there is a turn around for use by emergency vehicles. Mr. MacConnell indicated that emergency vehicles could use the existing parking area of the middle flag lot. In doing so, the amount of pavement necessary would be reduced. Ms. Ashby questioned whether the existing parking area was sufficient for emergency vehicles, such as fire trucks, to turn around.

Ms. Greenbaum asked whether the application had been reviewed by the Fire Department. Staff indicated that the application was transmitted to the Department, but had not received anything from them.

Building Commissioner Weeks noted that Section 7.71 discusses specific requirements for common driveways.

Mr. MacConnell noted that he understands the safety concerns, however, he requested the Board consider granting a waiver for the driveway requirement because there is an existing driveway that has provided access for over 20 years without issue.

Ms. Ashby indicated that because the driveway would now serve as a common driveway, that it would need to meet the requirements of Section 7.7 of the Zoning Bylaw.

John Quinn, 366 Station Road, stated that he understands that the Board is approving the creation of the flag lots, but remains concerned about the location of a house and septic system on the southern flag lot.

Mr. Quinn asked about the process for approval of the house and whether neighbors would be notified. Staff indicated that the submission of construction plans may be required at a public meeting but that abutters are not usually notified of a public meeting. Staff indicated that if Mr. Quinn requested notification, they would attempt to do so.

Ms. Greenbaum made a motion to close the public hearing. Mr. Beal seconded the motion and the Board voted unanimously to close the public hearing.

Public Meeting:

Ms. Ashby asked if any of the Board members were opposed to granting the permit, with conditions. The members said they have no objections, and would like to discuss conditions.

Ms. Greenbaum noted that she would approve the application with conditions related to turnaround access for emergency vehicles and a condition noting that the property must meet requirements of the Aquifer Recharge Protection Zoning District for the storage of materials.

The Board spent the remainder of the time during the public meeting discussing the conditions for granting the Special Permit.

Findings:

The Board finds under Section 6.3 of the Zoning Bylaw, Flag Lots, that:

6.32 – The minimum lot area required for a flag lot in the R-O district is 60,000 square feet. The lot area of 21D-7, exclusive of the flag pole, is 65,572 square feet and the lot area of 21D-2, exclusive of the flag pole, is 60,050 square feet.

6.33 – Both proposed flag lots contain an access strip with 40 feet of road frontage; the pole is 40 feet wide, is approximately 250 feet in length and does not contain any direction change.

6.34 – Both proposed flag lots contain a building area with a radius of 150 feet where 150 feet is required for street frontage in an R-O zoning district.

6.35 – The building area of both proposed flag lots contain a circle with a 150 foot diameter.

6.37 & 7.702 – The common driveway access must be designed in accordance with Section 7.7 of the Zoning Bylaw and approved by the Zoning Board of Appeals.

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood in which it is proposed because the area contains numerous flag lots containing single family dwellings.

10.382, 10.383 and 10.385 – The proposal will not constitute a nuisance due to air pollution, lights or visually offensive structures and accessories because the proposed flag lots meet the minimum requirements of the Zoning Bylaw for size and access.

10.384 - Adequate and appropriate facilities will be provided for the proper operation of the flag lots because they meet the minimum area requirements of the Zoning Bylaw.

10.387 – The proposal provides convenient and safe movement within the site and in relation to adjacent property because the common access way will serve three potential flag lots and will be designed to meet the minimum requirements of the Zoning Bylaw and the conditions of this permit will improve access for emergency vehicles.

10.388 – The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment or use because each flag lot, if developed, meets the parking requirements for a single family dwelling.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage of surface water because each lot will have its own well and septic system, and all single family residences are required to contract with a refuse/recycling hauler.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health and welfare of the residents of the Town of Amherst. .

Public Meeting - Zoning Board Decision:

Ms. Greenbaum made a motion to APPROVE the application with the conditions as drafted in the public meeting, Mr. Beal seconded the motion.

For all the reasons stated above, the Board VOTED unanimously to grant a Special Permit to Joseph Shaw to create two flag lots (Map 21D, Parcels 7 & 2) under Section 6.3 of the Zoning Bylaw, as submitted in the application by Joseph Shaw, with conditions.

JANE ASHBY

HILDA GREENBAUM

ERIC BEAL

FILED THIS _____ day of _____, 2008 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2008.
NOTICE OF DECISION mailed this _____ day of _____, 2008
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2008,
in the Hampshire County Registry of Deeds.

**Town of Amherst
Zoning Board of Appeals**

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit , to create two flag lots (Map 21D, Parcels 7 & 2) under Section 6.3 of the Zoning Bylaw, at 18 Wildflower Drive (Map 21D, Parcel 8), as indicated in the application submitted by Joseph Shaw, with the following conditions:

- There shall be a single, common driveway to serve the three flag lots.
- The flag lots shall be configured as shown on the plan drawn by Heritage Surveys, Inc, dated April 29, 2008 and last revised on July 14, 2008, on file with the Zoning Board of Appeals.
- Prior to the issuance of a building permit, a site plan showing a common driveway containing the appropriate width, emergency vehicle access and turn around in accordance with Section 7.7 of the Zoning Bylaw, must be submitted and approved by the Zoning Board of Appeals at a public meeting.
- Prior to the issuance of a building permit, a site plan showing the proposed location of a single family residence and location of the septic system must be submitted for review by the Zoning Board of Appeals at a public meeting.
- Prior to the issuance of a building permit, a common driveway agreement, recorded at the Hampshire County Registry of Deeds shall be submitted to the Building Commissioner in accordance with Section 7.720 of the Zoning Bylaw.
- Street address signs shall be installed in accordance with the requirements of the Fire Department and shall be visible and readable by emergency vehicles. Such address signs shall not obstruct the vision of those entering or exiting the common driveway.
- This project is subject to Section 14 of the Zoning Bylaw, Phased Growth. The development authorization date shall be November, 2008 for each flag lot.
- All exterior lighting shall be downcast.
- The Aquifer Recharge Protection (ARP) District restrictions found in Section 3.254 of the Bylaw shall be observed, including, but is not limited to, a prohibition on the use of sodium chloride, fertilizers, pesticides and other hazardous leachable materials.
- This permit shall expire two years after filing with the Town Clerk unless substantial construction has commenced within that period.

JANE ASHBY, Chair
Amherst Zoning Board of Appeals

DATE